

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 4 | Issue 1

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

An Insight into Free Speech, Dissent, Right to Protest, Strikes and Lock-outs

DR S.K. BOSE¹

ABSTRACT

Free speech is the symbol of a free nation and free citizens. It is the very essence of a parliamentary democracy that binds and empowers people to discharge their duties, obligations and demonstrate their deep sense of nationalism with ferocious pride. The voice of people at the time of national crisis should be heard most clearly for 'Vox Populi, Vox Dei' 'the voice of the people is the voice of God. The Universal Declaration of Human Rights (1948)—Article 19 states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". There are numerous questions that lurk underneath the cliché regarding our valuing of free speech. This paper considers some material facts with regards to free speech and expression, dissent, right to silence and right to protest etc. In the hostile climate of rampant intolerance, this article seeks to find out as to why and how political silence shows it spunk in different circumstances. Apart from discussing roles and origins of strikes and lock-outs, this paper gives a very interesting insight into an assessment of their social values.

Keywords: *free speech, right to protest, strikes and lock-outs, dissent, right to silence, political English*

I. A FEW QUESTIONS

Most political democracies have, as one of the key cornerstones that sustain the polity, a commitment to the principles of free speech and the rule of law. In this article, attempt is made to consider a few questions what this might mean in material fact when considered under the rubric of politicized English. There are numerous questions that lurk underneath the cliché regarding our valuing of free speech. For a simple example, what is the meaning of the adjective 'free' here? Does it refer to the speech itself, or to the speaker? In most usages, there is a curious slippage between the two, to the point where it is as if qualifying speech as 'free' is exactly the same as granting freedom, political and otherwise, to a citizen. If any and all

¹ Author is an Associate Professor, Faculty of Law, Manav Rachna University, India.

speeches are 'free', then how come some are more legitimate than others, in that they gain a readier audience while other speeches go more or less unheard and unattended to? Are some of these 'free speeches' more valued or more valuable than others, and if so, is the 'free' in question related to an economy that essentially gives a value and, in some cases, a price — to some speeches? What is the cost of a 'free' speech? What is the 'price' of citizenship in a polity? (Thomas Docherty, 2019)

This is of increasing importance in a contemporary climate in which a growing culture of intolerance veers towards the political silencing of dissent, and where the political far right deploy the liberal priorities of free speech in order to preach what Viktor Orbán² in Hungary has characterized as a mode of 'illiberal democracy'. In the speech where Orbán first gave details of what he meant by this, he noted in passing that the very mention of such a thing would be 'categorised as blasphemy by the liberal world. As 'blasphemy' is, literally, 'profane talk', he was thus embracing what is described as a kind of literal profanity. The far-right politics of one such as Orbán perverts the fundamentals of democratic liberalism, but it does so by using the very tools that gird the structures of that democratic liberalism in the first place. In the extremes to which this sometimes goes, the first result is the silencing of dissent (often via terror and fear-mongering), but the second is worse, for it silences by murder as in the case of many political assassinations worldwide, but also in the everyday situations in which, for example, a serving British MP, Jo Cox,³ can be shot and stabbed to death in the street by Thomas Mair, a far-right activist.

II. FREE SPEECH-WHAT IT MEANS?

The questions over the meaning of free speech, especially in an age of growing intolerance, are basic for any polity that would be democratic. Some individuals, within democracies as much as within tyrannies or authoritarian states, discover the real price of speaking out: like Jo Cox, they are sometimes killed. The price of their free speech was their life itself. After the Marjory Stoneman Douglas high school shooting on 14 February 2018 in the United States, the National Rifle Association predictably — argued their usual case that the only thing that stops a bad guy with a gun is a good guy with a gun. Leave aside for the moment the simple fact that what this really means.

² Viktor Mihály Orbán is a Hungarian politician who has been Prime Minister of Hungary since 2010; he was also Prime Minister from 1998 to 2002. He has also been President of Fidesz, a national conservative political party, since 1993, with a brief break between 2000 and 2003

³ The British Labour Party Member of Parliament for Batley and Spen, died after being shot and stabbed multiple times in Birstall, West Yorkshire. In September, Thomas Alexander Mair, a 53-year-old gardener, was found guilty of her murder and other offences connected to the killing. Mair held far right views, and targeted Cox for her defense of the European Union and immigration

In a politics that has been financialized in this way, with an intimacy, and even an identity, between government and commercial business and India is not really unusual in this regard — 'free' speech can be marketed and, indeed, is very readily marketed and financialized.

In what follows, I want to explore the consequences of this, and also to consider the political importance of 'speaking out' or 'speaking truth to power': I want to explore the question of political silence, including the silence that is sometimes the result of the political intolerance of free speech. A useful way to do this is to consider the conditions governing free speech when it is under threat.

Though it may be painful and not an ideal situation, political tact may at times exact silence on certain questions and facts everywhere in the world, in the interest of the most propitious solution. This is a position akin to that which, was already pointed out is well encapsulated in Timothy Garton Ash's⁴ observation that 'a right to say it does not mean that it is right to say it'. Within political English, how does a silence such as this operate? How do we evaluate 'free speech' in this kind of zero condition?

III. WHEN RIGHT TO SAY WHEN NOT

There is available to us, however, a re-configuration of Timothy Garton Ash's proposition, one that proposes a different inflection. His formulation implicitly raises the unstated question of when it is right to say it: 'under what conditions is it incumbent on an individual to exercise the right to free speech, in order to defend freedom of speech and of assembly?' Does political English find its proper realization only when it is spoken aloud, or are there circumstances in which the silence will be more politically effective?

Experts believe that sometimes silence for long years should be construed not as complicity - that is, not as constituting assent to the regime and the atrocities it was committing and about which was known but instead as a matter of 'political tact. That stance not only excuses the silence but also removes it from the realms of neutrality and instead positively weaponizes it: it is as if silence is to be construed as a deliberate political tactic that was instrumental in seeking 'the most propitious solution' to the predicament of living with and alongside.

Further, it implies that talk itself is somehow cheap, that it constitutes license instead of liberty when it becomes talk about all things' and when it is essentially self-indulgent or talking about all things as we like and please'. Political tact actually requires silence in some

⁴ **Timothy Garton Ash** CMG FRSA (born 12 July 1955) is a British historian, author and commentator. He is Professor of European Studies at Oxford University. Much of his work has been concerned with the late modern and contemporary history of Central and Eastern Europe.

situations, if the best political goal- that of liberty from tyrannical authoritarianism is to be achieved. This latter raises a further issue regarding 'the economics of free speech.

Shakespeare had considered this, in *Hamlet*.⁵ When the Ghost first appears, it maintains a silence, despite Horatio's repeated pleading it to speak. When Hamlet hears of the Ghost's presence, he bids and Marcellus to 'Let it be tenable in your silence still,' to understanding, but no tongue'. Then, the following night, when he himself meets with the Ghost, he notes that 'It will not speak' The Ghost would address Hamlet alone, and Hamlet withdraws to a sequestered and secret spot with the Ghost to hear what might be said, as if in clandestine or underground political meeting - which is what meeting actually is, given that it prompts a regicide.

Hamlet knows that this speech and hearing may cost him dear, argues, 'what should be the fear? / I do not set my life at a pin; fee'. As the Ghost also knows, freely speaking out - in the political rottenness that constitutes the regime in the state of Denmark- will entail a price, and that price is a matter of life and death. Having heard what the Ghost reveals about the political atrocity of his murder, Hamlet then immediately demands a tactful silence from his colleagues, Horatio Marcellus, making them swear to 'Never make known what you seen tonight'. Silence here is a deliberate political counsel. It also enters into an economy of speech or political expression: speech withheld, or 'saved up', is eventually repaid by the explosion of self-expression in the expense and expenditure of physical violence.

IV. DISSENT-A POLITICAL TACT

This is not how we usually view such matters. Dissent - especially dissent from the norms and rules of a political regime – is usually evidenced not by silence but by the very positive act of speaking out, loudly, bravely, defiantly and heroically in an assertion of the political values of free speech and of critique. The eloquent David faces down the Goliath of political power and violence, as it were. Dissent is not usually tacit but characterized by what the cliché calls 'speaking truth to power'. Dissent questions the legality of power by asserting the legitimacy of truth telling-and doing so loud. In this, we might say that dissent is the expression of reason against power. This is not the political conversion of word into deed;

⁵ *Hamlet* (/ˈhæmlət/), is a tragedy written by William Shakespeare sometime between 1599 and 1601. It is Shakespeare's longest play, with 30,557 words. Set in Denmark, the play depicts Prince Hamlet and his revenge against his uncle, Claudius, who has murdered Hamlet's father in order to seize his throne and marry Hamlet's mother. *Hamlet* is considered among the most powerful and influential works of world literature, with a story capable of "seemingly endless retelling and adaptation by others." It was one of Shakespeare's most popular works during his lifetime and still ranks among his most performed, topping the performance list of the Royal Shakespeare Company and its predecessors in Stratford-upon-Avon since 1879. It has inspired many other writers—from Johann Wolfgang von Goethe and Charles Dickens to James Joyce and Iris Murdoch—and has been described as "the world's most filmed story after *Cinderella*

rather it is the expression of word against deed in a very fundamental sense. It would thus be called a fundamental definition of the operation of academic freedom.

The Preamble to the Constitution of India promises liberty of thought, expression, belief, faith and worship. Clauses (a) to (c) of Article 19(1) promise: These freedoms are chariots through which dissent can be expressed without much fanfare. The right of freedom of expression and the right of freedom of conscience by themselves include the exceedingly significant right to disagree. The right to disagree, the right to dissent and the right to take another point of view would inhere inherently in each and every citizen of the country.⁶

When we view all these together, it is more than obvious that the right to dissent is the biggest right and, in my opinion, the most important right granted by the Constitution.⁷

“I chose this topic because I am troubled with certain recent events especially concerning lawyers and Bar Associations where forgetting the duty cast upon the lawyers under the Advocates Act, 1961 and the right of every person to have free legal aid, some Bar Associations in different parts of the country are passing resolutions that none of their members will appear in certain causes. This is something which worries me immensely. The community of lawyers was at the forefront of freedom movement. It is the lawyers who led the movements for civil rights. For me it is very saddening that today lawyers have to be told about the importance of dissent. I may add that I am not talking about the lawyers who are members of this Bar Association but through you I want to address various lawyers’ bodies that they cannot close their minds and they cannot refuse to appear in certain matters and they should not obstruct the justice delivery system.”⁸

He went on, “Every society has its own rules and over a period of time when people only stick to the age-old rules and conventions, society degenerates. New thinkers are born when they disagree with well accepted norms of society. If everybody follows the well-trodden path, no new paths will be created, no new explorations will be done and no new vistas will be found.

If a person does not ask questions and does not raise doubts questioning age-old systems, no new systems would develop and the horizons of the mind will not expand. Whether it be Buddha, Mahavira, Jesus Christ, Prophet Mohammad, Guru Nanak Dev, Martin Luther, Kabir, Raja Ram Mohan Roy, Swami Dayanand Saraswati, Karl Marx or Mahatma

⁶ INDIA CONST.

⁷ Deepak Gupta, *The Right to Dissent is the Most Important Right Granted by the Constitution: Justice Gupta*, THE WIRE (Jan. 10, 2021, 10:04 AM), <https://thewire.in/law/right-to-dissent-constitution-justice-deepak-gupta>.

⁸ Justice Deepak Gupta delivered a lecture at an event organized by the Supreme Court Bar Association on Feb 24, 2020

Gandhi, new thoughts and practices would not have been established, if they had quietly submitted to the views of their forefathers and had not questioned the existing practices, beliefs and rituals.”

In democracy dissent is an essential component which helps a country to grow in a holistic manner where not only the economic rights but also the civil rights of the citizen are to be protected, dissent and disagreement have to be permitted, and in fact, should be encouraged. It is only if there is discussion, disagreement and dialogue that we can arrive at better ways to run the country.

Justice D.Y. Chandrachud⁹ while addressing an academic gathering recently put the matter very succinctly. He said, “The blanket labeling of dissent as anti-national or anti-democratic strikes at the heart of our commitment to protect constitutional values and the promotion of deliberative democracy”. Therefore, when those in power claim that they represent the will of all the people that is more often than not a totally baseless claim. They may be the elected government voted on the first past the post system by a large number of voters, but it cannot be said that they represent the entire will of the people.

It is a well-settled principle of jurisprudence that law should be certain, but in this fast-changing world can laws remain stagnant? In my view the *interpretation of the laws has to be dynamic* and change with times and therefore it is not necessary that all of us agree with each other. That is why dissent plays an important role in the decision-making process.

V. KNOWING WHEN TO DISSENT

However, when important issues arise merely because the majority of the brethren are taking different view one should not feel stifled or in any way hesitate to take contrary view even if one is the sole voice. As Tagore said, “*Open Thy Mind, Walk Alone We Are Not Afraid, Walk Alone.*” *Dissent is* controlling equipment in the hands of a judge which should be used when required most prudently.

The question may arise here, “Does the right to dissent constitute the right to criticize? Many legal experts believe that we all should not be averse to criticism. As a matter of fact, only through constructive criticism we can improve may it be the executive, legislature or judiciary. The system governance of a democracy will become robust and effective through public participation.

⁹ Dhananjaya Yeshwant Chandrachud (born 11 November 1959) is currently a Judge of the Supreme Court of India. He is a former Chief Justice of the Allahabad High Court and a former judge of Bombay High Court

VI. RIGHT TO PROTEST-STRIKES AND LOCK-OUTS

Before we go into the detail let's understand the role of protests, strikes and lock-outs. During the period of the industrial unrest following on the First World War, strikes and lock-outs were euphemistically described as "stoppages", since both had this in common that they involved cessation of work. And yet in their implication they were much more than the mere obverse and reverse of the same medal. It has often, well said that if 'strike is revolution, lock-out is counter-revolution'. For strikes are meant to force wages upward, and thus lead to an improvement in the economic welfare of the workers; and lock-outs are intended to counter this tendency.

Strikes came into existence in the wake of the Industrial Revolution. With the invention of machinery to supplant human labour, unemployment, lowering of wages in a competitive market, supply of labour in excess of demand became the order of the day. The literature of mid-Victorian England is full of references to the widespread misery caused by unscrupulous exploitation of labour by the owners of the instruments of production. Such references intrude even into the school-boy classic, Tom Brown's School days, not to speak of the novels of Dickens,¹⁰ Kingsley and others, which have a distinct social purpose. In 1844 Disraeli almost anticipated Karl Marx's classic concept¹¹ by describing the Rich and the as "two nations" whose interests are forever irreconcilable. Strikes were the answer that labour gave to this organized exploitation by the capitalist classes.

The merchant guilds were countered by trade-unions that sought to check the ruthless character of sweated labour. In this attempt the chief weapon of the worker was to go on a strike, to cease production until employers found it to their interest to grant concessions in wages and emoluments in order to keep their profits going. The employers were at an advantage in this struggle since they had the government on their side, for in Parliamentary democracy capital always rules the roost. In England Shaftesbury's social legislations were angrily opposed both by Whigs and Tories. A change came after the close of the First World War, when the Labour party emerged in the elections in some strength. Then the employers found it necessary to revise retaliatory--measures if a government were unto face the odium

¹⁰ **Charles John Huffam Dickens** FRSA (7 February 1812 – 9 June 1870) was an English writer and social critic. He created some of the world's best-known fictional characters and is regarded by many as the greatest novelist of the Victorian era. His works enjoyed unprecedented popularity during his lifetime and, by the 20th century; critics and scholars had recognised him as a literary genius. His novels and short stories are still widely read today.

¹¹ Marx sought to define class as embedded in productive relations rather than social status. His political and economic thought developed towards an interest in production as opposed to distribution, and this henceforth became a central theme in his concept of class.

of opposing just labour demands, one of these was the 'lock-out'—to close the mills or the mines, and thus force the workers to submit.

VII. PROTESTS ARE REVOLUTIONARY

But why are strikes and lock-outs described as revolutionary and counter-revolutionary? A revolution is a social upheaval that brings about a quick and complete change in the conditions of life. The object of this change is an all-round improvement of these conditions, both qualitatively and quantitatively. Strikes seek to obtain better living conditions for the workers who form the majority in the community. They attempt to restrict the fabulous profits of the expropriating classes in the interests of the workers. Better wages, better homes, better health, better education, and better opportunities for self-improvement,—these are the healthy objectives for the attainment of which labour resorts to strikes. Hence strikes may justly be described as contributing towards a revolutionary process in man's progress towards a perfect society.

'Lock-outs', on the contrary, are counter-revolutionary, because there is to frustrate this revolutionary urge, this progressive trend in human affairs. They seek to maintain the status quo or its proximate conditions. To hold down wages to a minimum, while workers who have to live in slums, are denied equal opportunities for the education of their children, and no savings to fall back upon in evil times, is surely unjustifiable, -and may be rightly as reactionary.

A government is judged progressive or otherwise by its attitude to strikes and -lock-outs. A government that rules out strikes, but is neutral in lock-outs, is surely reactionary. In modern times, great reliance is placed on arbitration and conciliation boards. They are commendable steps for easing tension, but they are often used to break the tempo of labour movements, and thus create conditions in which a Government may afford to set aside the recommendations of these boards and tribunals if they favour the workers. The months that elapse between the appointment of a board or tribunal and the submission of its report or judgment is a useful interregnum that gives the employers time to assemble their forces of obstruction.

It follows that if strikes are to be tolerated as forces of progress, lock-outs can hardly be so. If the welfare of the workers be the aim of a pressure on employers of labour to contribute to that welfare—to maintain schools and health-clinics, to build adequate houses, and to provide for social insurance for the benefit of the workers—must be regarded as justifiable means to attain these ends. Strikes are the only legitimate way of securing these. Of course a way is the establishment of a socialist state where of the instruments of production is vested in the

workers themselves. But few are intellectually and emotionally prepared for such a revolutionary change. Where we cannot have the best, the second best must serve. We have therefore, to countenance strikes as a gradual revolutionary process towards social amelioration, and resist reactionary or counter-revolutionary lock-outs.

VIII. CONCLUSION

From the above discussion, it is explicitly clear that freedom especially academic oriented is not entirely identical with free speech but is intimately related to it. Further, it follows from the definition that the exercise of academic as well as administrative freedom is intrinsically a political expression, an expression of a thought that has a purchase, however directly or indirectly, upon a polity of academic tenure. This step constitutes a move that intrinsically jeopardizes the academic's security and places it at risk. How apt it would be to put this wording explicitly contravenes the principles of academic freedom enshrined in the UNESCO declaration of November 1997 (section VI, A, 27), which states that

*“Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies. All higher-education teaching personnel should have the right to fulfil their functions without discrimination of any kind and without fear of repression by the state or any other source”.*¹²

¹² Recommendation concerning the Status of Higher-Education Teaching Personnel, UNESCO (Jan. 10, 2021, 10:06 AM), http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html